

ESTTA Tracking number: **ESTTA227130**

Filing date: **07/30/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

### Petitioner Information

Name	Mr. Jeffrey Kaplan		
Entity	Individual	Citizenship	UNITED STATES
Address	POB 11106 Ft. Lauderdale, FL 33339 UNITED STATES		

Correspondence information	Mr. Jeffrey Kaplan POB 11106 Ft. Lauderdale, FL 33339 UNITED STATES eggcream@earthlink.net Phone:9547930637
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### Registration Subject to Cancellation

Registration No	3008547	Registration date	10/25/2005
Registrant	DIANE KROLL AND THOMAS BERBAS PARTNERSHIP, THE 22 RIVERSIDE WATERY LANE DUBLIN, IRELAND		

### Goods/Services Subject to Cancellation

Class 032. First Use: 2003/08/25 First Use In Commerce: 2003/09/05 All goods and services in the class are cancelled, namely: CARBONATED, MINERAL AND AERATED FLAVORED NONALCOHOLIC MILK BASED BEVERAGES
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### Grounds for Cancellation

Abandonment	Trademark Act section 14
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Attachments	Sparklingcowcancellation.pdf ( 4 pages )(131357 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jeffrey Kaplan/
Name	Mr. Jeffrey Kaplan
Date	07/30/2008

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Registration No. 3,008,547  
For the Mark “ Sparkling Cow in typed form”  
Date Registered on October 25<sup>th</sup> 2005

Jeffrey Kaplan  
POB 11106  
Ft. Lauderdale, Fl. 33339,

Cancellation No:

Petitioner

v.

Diane Kroll and Thomas Berbas Partnership, The  
Diane Kroll and Thomas Berbas, Both US Citizens,  
Partnership Ireland 22 Riverside Watery Lane Dublin  
Ireland

Registrant

Box TTAB FEE  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22203

**PETITION TO CANCEL**

Jeffrey Kaplan (hereinafter the “Petitioner”) an individual whose address is POB  
11106 Fort Lauderdale, Florida 33339 hereby petition the Trademark Trial and Appeal  
Board for cancellation of Registered Mark No. 3,008.547 - “SPARKLING COW”  
(hereinafter “Registered Mark”) and states:

1. To the best of “Petitioners” knowledge, the name and address of the current owners of the “Registered Mark” is Diane Kroll and Thomas Berbas. (hereinafter “Registrant”) whose last known address is 22 Riverside Watery Lane, Dublin Ireland.

2. Absent cancellation, Petitioner will be damaged by the “Registered Mark”, and hereby petitions to cancel the same.

## **I. STANDING**

3. On or about July 30<sup>th</sup> 2008, Petitioner filed an intent-to-use application for Trademark Serial # 77/534351, “Sparkling Cow” (hereinafter the “Application”) for use in carbonated soft drinks.

4. Since the filing of the Application, Petitioner has had a bona fide intent-to-use the mark in commerce or in connection with the services listed in the application.

5. Since the Petitioner’s mark is spelled exactly the same as the Registered Mark, the Petitioner is confident that his application will be denied based on the Section 2(e)(1) Likelihood of Confusion.

6. Petitioner reasonably believes that it will be damaged by this denial.

## **II. GROUNDS FOR CANCELLATION**

7. Petitioner alleges that Registrant has abandoned the Registered Mark, based upon a period of non-use for at least three (3) consecutive years, with no intent to resume use.

8. Petitioner has performed diligent research in an effort to obtain information about the Registrant and their use of the Registered Mark and has concluded that:

a. Registrant's company Excite Beverage which was based in Dublin, Ireland has been involuntary dissolved by the Government;

b. Registrant is being sought by the Irish Garda Police for questioning about an alleged fraudulent scheme whereby over two million dollars Euro was stolen by them from two Irish Banks;

c. Registrant's company Excite Beverage was a paper shell and never was a beverage distribution company. This fake company had no employees, no trucks, no offices or any assets or income since its inception. In addition Registrant has not filed any income tax document since 2003.

d. Registrant completed one production run of their beverage using the Registered Mark in 2003 but has never sold any product.

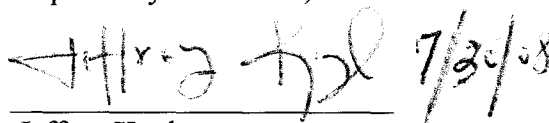
e. Since 2003 Registrant has not manufactured or sold any additional product using the Registered Mark. In 2005, before the two year expiration of the product, Registrant donated all of the previously manufactured product to a food bank.

f. Since 2003 Registrant has maintained a web page at [www.sparklingcow.com](http://www.sparklingcow.com) but this use of "Parking a Trademark" is not accepted by the United States Patent and Trademark Office and does not constitute "continued use in commerce of a trademark".

9. Petitioner's research further evidences that Registrant's operation as a business has ceased, thereby providing sufficient evidence that Registrant has no intent to resume use of the Registered Mark.

WHEREFORE, Petitioner respectfully requests that the Trademark Trial and Appeal Board find that Petitioner has a bona fide intent-to-use the mark "Sparkling Cow in typed form" in commerce in connection with the services, that Registration No. 3,008,547 has been abandoned by its non-use for a period exceeding three (3) years, and that Registrant has no intention of resuming use of the Registered Mark.

Respectfully Submitted,

Handwritten signature of Jeffrey Kaplan and the date 7/30/08.

Jeffrey Kaplan  
POB 11106  
Ft. Lauderdale, Florida 33339  
(954) 793-0637